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In The

Supreme Court of the United States

October Term, 1996

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and and JAMES M. CRAWFORD;

Petitioners,

vs.

ANCHORAGE, A Municipal Corporation,

Respondent.

On Petition for a Writ of Certiorari to the Alaska Supreme Court

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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CONSTITUTIONAL PROVISIONS,TREATIES, STATUTES, ORDINANCES AND REGULATIONS

U.S. Constitution, art. I, § 10

U.S. Constitution, amend. XIV, § 1

ARGUMENT

Repondent the Municipality of Anchorage (the "Municipality" or "Respondent") claims in its Brief in Opposition that there are no jurisdictional grounds for reviewing the decision of the Alaska Supreme Court for which Petitioners HALO seek a writ of certiorari, Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, 927 P.2d 728 (Alaska 1996). Respondent the Municipality also claims that any federal question presented here does not warrant the review of this Court. Respondent is wrong on both counts.

This Court has jurisdiction to review a decision of the highest court of a state when that decision involves a question of federal law, as it does here. Furthermore, this case involves one of the most important and fundamental rights under the federal constitution--the right to vote. Accordingly, there are clearly jurisdictional grounds to grant Petitioners request for a writ of certiorari, and the importance of the federal right involved here warrants such review.

The Municipality argues that any claim by Hillside voters to a right to a separate vote must be predicated on the Anchorage Municipal Charter. See Respondent's Brief in Opposition ("Brief in Opp.") at 4-5. This is not the case, however. Under circumstances such as those here, the right to a separate vote is guaranteed, independently of the Municipal Charter, by the Equal Protection Clause of the U.S. Constitution. See Hussey v. City of Portland, 64 F.3d 1260, 1263 (9th Cir. 1995), cert. denied, -- U.S. --, 1160 S. Ct. 911 (1996); Hayward v. Clay, 573 F.2d 187, 190 (4th Cir. 1978). Once a group or geographic area has been given the right to vote separately on a matter, that right is protected by the Constitution and cannot be arbitrarily withdrawn. See id. In this instance, the right was not merely arbitrarily withdrawn, it was withdrawn for an illegitimate, unconstitutional purpose -- because the Municipality objected to the way in which Hillside voters had previously voted on this same issue--four times in fact.

Respondent also argues that Petitioners HALO do not have an equal protection or gerrymandering claim "because every voter within the proper voting unit was given an equally powerful vote." Brief in Opp. at 7. This same argument, however, is true of most gerrymanders. The issue is whether a "voting unit" can be selected with both the intention and the effective result of totally disenfranchising a dissident political, economic, or geographic minority after that group has been granted a right to a separate vote on precisely the same issue on

several prior occasions, and, further, after each of the other similarly situated, distinct areas in the Municipality which considered this issue had also been granted the right to a separate vote. Significantly, Respondent does not dispute this history: at no time in its history (other than the election which is the subject of HALO's present Petition) has the Municipality denied an area the right to a separate vote to determine whether the area would become part of the Anchorage Police Service Area ("PSA"). Once this right was extended, it is protected by the U.S. Constitution. See Hussey v. City of Portland, 64 F.3d at 1263 and Hayward v. Clay, 573 F.2d at 190.

Remarkably, the Municipality now denies what it admitted below in the Alaska Supreme Court: that Respondent submerged Hillside voters into a voting unit, in which they were outnumbered 10 to 1 by voters of the existing Anchorage PSA, who had a financial incentive to vote the "right" way,[1/] simply because Hillside voters had voted the "wrong" way four previous times. Brief in Opp. at 8-10. In its brief to the Alaska Supreme Court, the Municipality admitted that it did "not dispute the fact that it is taking the present step because the Hillside previously

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[1/]Coincidentally, as counsel is preparing this Reply, the lead story in the Anchorage Daily News for April 9, 1997 confirms this financial incentive; the headline reads: "Police bill ups taxes for Hillside[;] Other homeowners to pay less."

voted not to join in the Anchorage [PSA]." See Appendix ("App.") at 92a.

> The Municipality also argues that:
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> There is no unique geographical boundary to the Hillside separate and apart from the service area boundary which is subject to modification under the procedures used by the Assembly, approved by the voters and confirmed by the Alaska Supreme Court.

Brief in Opp. at 10-11. The same can be said, however, for the unincorporated area surrounding the City of Portland, Oregon, to which a right to vote on annexation issues had been granted and then unconstitutionally withdrawn. See Hussey v. City of Portland, 64 F.3d at 1263. The distinct geographic configuration of the Hillside has been recognized by Respondent in four prior elections on this very same issue: in 1977, 1986, 1988, and 1993. In each instance, Hillside residents were granted the right to a separate vote. The area is also clearly delineated on municipal tax, election district, and service area maps. Further, the Hillside is just as distinct an area as was each of the 10 other areas which was given this right to a separate vote on this issue.

The Municipality's admitted intention was to negate any influence by a geographically identifiable group of voters, who had voted the "wrong" way on four

occasions. The method chosen to negate that influence was to submerge Hillside voters into a voting unit in which the "politically incorrect" Hillside voters were outnumbered, 10 to 1, by "politically correct" voters. The result was effective, total disenfranchisement. It would have made no difference whether 100 percent of the registered Hillside voters went to the polls and voted "No" or 100 percent simply stayed home.

The result of that election is effectively irreversible, unless this Court intervenes. Detachment of a significant segment of taxable property from the New Anchorage PSA, which is encumbered with bonded indebtedness, is very likely impossible due to constitutional restrictions on the impairment of contracts. See U.S. Constitution, Art. I, § 10. Detachment could impair the security of bondholders. See, e.g., Canal Nat'l Bank v. School Administration District, 203 A.2d 734 (Me. 1964) and other decisions cited in Petitioners' Petition for Writ of Certiorari at 25.

The Municipality's actions constitute an unconstitutional non-racial, non-partisan gerrymander under Davis v. Bandemer, 478 U.S. 109 (1986). There was a clear, undisputed, intention to "freeze out" a dissident political minority. The result was effective, total, disenfranchisement which will "consistently degrade a voter's or a group of voters' influence on the political process as a whole." 478 U.S. at 132.

This Court should not be misled by Respondent's argument that no "important issue of federal law is involved" and that "the precedent set by this case will not affect anyone other than the residents of Anchorage, Alaska."[2/] Many of this court's most important decisions concerning "one man/one vote" had their origin in obscure, local abuses of power, such as this. Board of Estimates v. Morris, 489 U.S. 688 (1989) concerned a city board of equalization. The result was that institutional representation was found to violate Equal Protection. Kramer v. Union Free School District, 395 U.S. 699 (1969) dealt with a local school district election. Evans v. Cornman, 398 U.S. 419 (1970) concerned eligibility to vote for a county board of supervisors. City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) dealt with a city bond issue, as did Cipriano v. City of Houma, 395 U.S. 701 (1969).

The City of Houma is a small town in southern Louisiana, with a population of about 30,000 people. It is

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[2/]This Court has previously scrutinized the way in which the State of Alaska distributed a portion of its oil wealth to the citizens of Alaska, surely an issue of little concern to anyone residing outside Alaska. Nevertheless, this Court granted certiorari and reversed the decision of the Alaska Supreme Court. Zobel v. Williams, 457 U.S. 55 (1982), reversing Williams v. Zobel, 619 P.2d 448 (Alaska 1980).

far smaller than Anchorage, Alaska, which contains about 250,000 people, nearly half of the state's population. Why would any non-resident, or this Court, be concerned about the outcome of local revenue bonds in Houma? Or, about a board of equalization in New York City, a local school district election in upstate New York, a local bond issue election in Phoenix, or whether some people were or were not allowed to vote for an obscure board of county supervisors in Maryland?

The reason is that the right to vote and to make one's vote count is the most fundamental of American rights. No local government, wherever located, has the right to withdraw a right to vote from voters to whom that right has been granted, gratuitously or otherwise, simply because they voted the "wrong way" on four occasions (or on only one, for that matter). Today, the excuse for withdrawing that right may be that the "politically incorrect" voters were using that right to perpetuate themselves as "free riders" on a police budget. Tomorrow it may be any excuse which a municipal legislative body and mayor can devise to further their own political agenda. No community in the United States is immune from such manipulations.

It should make no difference whether the device which is chosen to effectively "freeze out" a "targeted" group of voters is to refuse to allow them to register to

vote,[3] to allow them to register but refuse to allow them to cast ballots,[4] to refuse to count their votes once cast,[5] to stuff the ballot box,[6] or simply to draw the boundaries of a voting unit so that the "targeted group" is outnumbered 10 to 1 by hostile voters. Each method achieves the same, intended, result: total, effective disenfranchisement of the "targeted group." If one method is unconstitutional, aren't they all?

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

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[3] Carrington v. Rash, 380 U.S. 89, 94 (1965).

[4] Evans v. Cornman, 398 U.S. 419, 422-23 (1970).

[5] United States v. Mosely, 238 U.S. 383 (1915).

[6] Ex Parte Siebold, 100 U.S. 371 (1879); United States v. Saylor, 322 U.S. 385 (1944).

Respectfully submitted this 10th day of April, 1997.

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